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REC'D TN  
REGULATORY AUTH.

Guy M. Hicks  
General Counsel

OCT 22 PM 2 02

October 22, 1999

EXECUTIVE SECRETARY

**VIA HAND DELIVERY**

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37245

Re: *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996*  
Docket No. 99-00430

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Response to Exceptions of ITC^DeltaCom Communications, Inc. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

**FILE**

REC'D TN  
REGULATORY AUTH.  
**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

Nashville, Tennessee

'99 OCT 22 PM 2 02

IN RE: *Petition by ITC^DeltaCom Communications, Inc. for Arbitration of Certain Unresolved Issues in Interconnection Agreement Negotiations Between ITC^DeltaCom and BellSouth Telecommunications, Inc.*

Docket No. 99-00430

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE**  
**TO EXCEPTIONS OF ITC^DELTACOM COMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its response to the exceptions filed by ITC^DeltaCom Communications, Inc. ("DeltaCom") to the October 6, 1999 Report and Initial Order of the Pre-Arbitration Officer ("October 6 Report"). In its October 6 Report, the Pre-Arbitration Officer ruled that certain issues were not properly the subject of this arbitration because these issues were not set forth in DeltaCom's arbitration petition. The Pre-Arbitration Officer concluded that DeltaCom's proposed issues were "expansions rather than clarifications of these issues as originally presented in the petition, and as such, are rejected." October 6 Report at 10. The Pre-Arbitration Officer's conclusions are correct, and DeltaCom's exceptions should be rejected.<sup>1</sup>

DeltaCom claims that the Pre-Arbitration Officer erred in refusing to consider two issues -- binding forecasts and the Master Street Address Guide ("MSAG"). There is no dispute that DeltaCom did not raise either of these issues in its arbitration petition, and DeltaCom does not

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<sup>1</sup> While BellSouth believes that DeltaCom's exceptions to the October 6 Report are without merit, BellSouth has filed its own exceptions, which should be granted. In particular, the Authority should find that the October 6 Report inconsistently applies the principle that arbitration is limited to issues set forth in DeltaCom's arbitration petition by purporting to permit arbitration of certain issues -- such as combinations of network elements and retail services -- that appear nowhere in that petition.

**FILE**

contend otherwise. DeltaCom seeks to arbitrate the issue of binding forecast under the guise of Issue 5, which, as set forth in the petition, involves whether the parties should “continue operating under existing local interconnection arrangements?” Nothing in Issue 5 refers expressly or implicitly to binding forecasts, particularly when neither DeltaCom nor BellSouth has any existing obligation to provide binding forecasts. Issue 3(m), under which DeltaCom attempts to shoehorn the MSAG issue, was specifically identified as follows: “What type of repair information should BellSouth be required to provide to ITC^DeltaCom such that ITC^DeltaCom can keep the customer informed?” Nothing in Issue 3(m) even remotely refers to the MSAG database, which relates to E911 services, not “repair information.”

Unable to point to any place in the arbitration petition where DeltaCom allegedly raised these issues, DeltaCom insists that the issues were mentioned in the proposed interconnection agreement and summary issues matrix attached to the petition. Although DeltaCom attempts to rely upon the Rules of Civil Procedure concerning attachments to pleadings, (Exceptions at 2), such reliance is misplaced in light of the plain language of the statute governing this arbitration, which expressly limits the Authority’s consideration “to the issues set forth in the petition and in the response, if any, ....” 47 U.S.C. § 252(b)(4)(A). The statute does not permit the Authority to consider issues as set forth in the petition as well as “attachments thereto,” notwithstanding DeltaCom’s expansive ready to the contrary.

DeltaCom's argument also is squarely foreclosed by *MCI Telecommunications Corp v. Pacific Bell*, 1998 U.S. Dist. LEXIS 17556 (N.D. Cal. Sept. 29, 1998). In that case, the court addressed Pacific Bell’s contention that the issue of dark fiber was not properly before the arbitration panel because MCI did not list dark fiber as an issue in the proceeding, but rather “merely mentioned dark fiber in several appendices attached to its petition for arbitration.” The

court agreed, holding that “[s]imply listing an issue in an appendix to a petition does not sufficiently ‘set forth’ the issues for arbitration, and accordingly the issue is not properly before the Court.” *Id.* at 74. The court’s reasoning in *Pacific Bell* is fatal to DeltaCom’s argument, which may explain why DeltaCom does not mention the case.

Furthermore, accepting DeltaCom’s expansive reading of the statute would lead to absurd results. Taken to its illogical extremes, DeltaCom’s view would invite a party seeking arbitration to simply file a short petition with voluminous attachments, leaving it up to the Authority and the other carrier to decipher those issues really in dispute. The Authority should respectfully decline such an invitation.

DeltaCom’s impassioned plea about the “public safety and welfare impact” concerning the MSAG issue is equally flawed. First, to the extent MSAG was so critical, DeltaCom should have taken the time to raise the issue in its arbitration petition, which DeltaCom did not do. Second, DeltaCom’s concern about accessing the MSAG database has no impact on the public. The MSAG database ensures the accuracy of street addresses for E911 purposes, and, as a competing local exchange carrier, DeltaCom is responsible for transmitting update records on a nightly basis to the E911 database processing system, which is used to update continuously the MSAG database. DeltaCom’s desire to have daily access to the MSAG database for its own purposes does not affect “public safety,” and DeltaCom’s claims to the contrary are irresponsible.<sup>2</sup>

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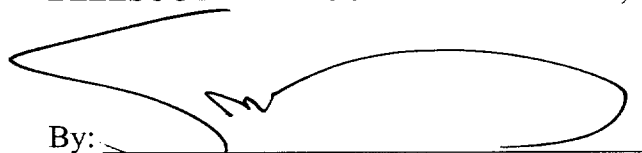
<sup>2</sup> It is interesting to note that, while addressing the binding forecast issue in its prefiled testimony, DeltaCom did not address the MSAG issue. This omission strongly undermines DeltaCom’s claims about the “public safety and welfare impact[s].”

For the foregoing reasons, DeltaCom's exceptions to the October 6 Report should be rejected.

This 22<sup>nd</sup> day of October 1999.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



By: \_\_\_\_\_

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand  
☐ Mail  
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☐ Overnight


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